

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: TESTOSTERONE REPLACEMENT THERAPY PRODUCTS LIABILITY LITIGATION	MDL No. 2545 Master Docket Case No. 1:14-cv-01748 Hon. Judge Matthew F. Kennelly
<p>This document relates to:</p> <p> MEDICAL MUTUAL OF OHIO, Plaintiff, v. ABBVIE INC., ABBOTT LABORATORIES, ABBOTT PRODUCTS, INC., SOLVAY AMERICA, INC., SOLVAY NORTH AMERICA, LLC, SOLVAY PHARMACEUTICALS, INC., SOLVAY PHARMACEUTICALS SARL, SOLVAY, S.A., AUXILIUM, INC., ELI LILLY AND COMPANY, LILLY USA, INC., ACRUX LIMITED, ACTAVIS PLC, ACTAVIS, INC., ACTAVIS PHARMA, INC., WATSON PHARMACEUTICALS, INC., WATSON LABORATORIES, INC., ANDA, INC., and ENDO PHARMACEUTICALS, INC., Defendants.</p>	No. 1:14-cv-08857

**DEFENDANTS' MOTION TO DISMISS
PLAINTIFF MEDICAL MUTUAL OF OHIO'S SECOND AMENDED COMPLAINT**

The undersigned Defendants respectfully move to dismiss the Second Amended Complaint (“SAC”) filed by Plaintiff Medical Mutual of Ohio (“MMO”) under Federal Rules of Civil Procedure 12(b)(1), (2), and (6). In support of this Motion, Defendants state as follows:

1. On June 2, 2015, the Court granted MMO leave to file the SAC and further directed that the undersigned Defendants should file their motion to dismiss the SAC and supporting memoranda by July 31, 2015; MMO should file its response to the motion by September 15, 2015; and Defendants should file their reply memoranda by October 14, 2015. *See* Doc. 73 (minute entry establishing briefing schedule); *see also* Master Docket Case No. 1:14-cv-01748, Doc. 660 (minute entry respecting page limits for Defendants joint and supplemental memoranda in support of their motion to dismiss).

2. The Court should dismiss MMO’s SAC under Rule 12(b)(1), (2) and (6). MMO lacks standing to sue Defendants under the RICO Act and Article III because MMO has not pleaded facts showing (1) that MMO sustained an injury to its “business or property” cognizable under RICO when it honored its contractual commitments to reimburse for TRT drugs whenever prescribed by a licensed physician, (2) that any alleged act of mail or wire fraud by any Defendant was the “but-for” cause of an alleged injury, and (3) that any alleged act of mail or wire fraud by any Defendant was the direct and immediate cause was of an alleged injury, as required by U.S. Supreme Court precedent respecting RICO’s proximate causation requirement. Furthermore, MMO fails to plead that each Defendant committed multiple predicate acts of mail or wire fraud with the particularity required by Rule 9(b). MMO’s RICO claims against the AbbVie Defendants, Auxilium, and the Actavis Defendants are barred by RICO’s four-year statute of limitations, and MMO’s RICO claims against the Lilly Defendants and Endo fail as well. MMO’s remaining claims under various state statutes and common law doctrines also

must be dismissed for multiple reasons. The grounds for dismissal are set forth fully in Defendants' Joint Memorandum in Support of Their Motion to Dismiss and Defendants' respective Supplemental Memoranda, which are being filed contemporaneously with this motion.

For these reasons and the reasons set forth in Defendants' Joint Memorandum and Supplemental Memoranda, the Court should dismiss MMO's SAC with prejudice.

Dated: July 31, 2015

Respectfully submitted,

/s/ David E. Stanley

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all registered attorneys of record.

/s/ David E. Stanley _____

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